

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TOMMIE LEESHAY BOYD,

Defendant-Appellee.

UNPUBLISHED

April 26, 2011

No. 301375

Oakland Circuit Court

LC No. 2010-233072-FH

Before: BECKERING, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

In this case involving allegations of criminal sexual conduct, the prosecution appeals by leave granted the trial court's order preventing it from presenting evidence under MCL 768.27a that defendant Tommie Leeshay Boyd engaged in sexual conduct with a different minor. We conclude that the trial court erred when it determined that, as a matter of law, the prosecution could only use other acts evidence to rebut certain defenses and, therefore, could not present the proposed other acts evidence in its case-in-chief. For that reason, we reverse the trial court's order and remand for further proceedings.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Roper*, 286 Mich App 77, 90; 777 NW2d 483 (2009). However, we review de novo whether a rule or statute precludes admission of evidence as a matter of law. *Id.* at 91. A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

Although the rules of evidence generally restrict the use of other acts evidence to show that a defendant has a propensity to commit certain types of crimes, see *Roper*, 286 Mich App at 91, our Legislature has determined—as a matter of public policy—that this general limitation should not apply to evidence of prior criminal sexual conduct against a minor in a prosecution for criminal sexual conduct involving a minor. Specifically, our Legislature provided that “in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant.” MCL 768.27a. Accordingly, because other acts evidence can be relevant to show propensity, under MCL 768.27a, the prosecution may properly present evidence of a prior criminal sexual act against a minor in order to show that the defendant has a propensity to commit sexual acts against minors.

People v Pattison, 276 Mich App 613, 619; 741 NW2d 558 (2007); see also *People v Petri*, 279 Mich App 407, 411; 760 NW2d 882 (2008). And the statute permits “prosecutors to introduce evidence of a defendant’s uncharged sexual offenses against minors without having to justify their admissibility under MRE 404(b).” *Pattison*, 276 Mich App at 618-619. The statute “reflects the Legislature’s policy decision that, in certain cases, juries should have the opportunity to weigh a defendant’s behavioral history and view the case’s facts in the larger context that the defendant’s background affords.” *Id.* at 620. Having a complete picture of a defendant’s history can shed light on the likelihood that a given crime was committed. *Id.*

The statute expressly requires the evidence to be relevant. MCL 768.27a (stating that the other acts evidence “is admissible and may be considered for its bearing on any matter to which it is relevant.”). Under MRE 401, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Here, the trial court determined that it would take the prosecution’s request to admit the evidence under advisement and ordered that the evidence of defendant’s conduct with an underage teenager could not be admitted in the prosecution’s case-in-chief. The trial court relied on *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), in finding that “[t]he probative value of the People’s offer of proof very much rises and falls on how the case is defended.” Yet, as we already noted, the proposed evidence is relevant to show Boyd’s propensity to engage in criminal sexual conduct with minors—among other possible uses—and is not limited solely to rebut his defenses. Further, although evidence must be material, “[m]ateriality, however, does not mean that the evidence must be directed at an element of a crime or an applicable defense.” *People v Smith*, 282 Mich App 191, 195; 772 NW2d 428 (2009) (emphasis added, quotation marks and citation omitted).

The evidence proffered by the prosecution is relevant to establish Boyd’s propensity to commit sexual acts against minors with whom he had a coaching relationship. The fact that defendant had a sexual relationship with another underage teenager makes it more likely that he also had a sexual relationship with complainant. The evidence is also relevant because it tends to show that it is more probable than not that complainant is telling the truth when she accused defendant of committing criminal sexual conduct offenses against her. As such, the trial court clearly abused its discretion when it determined that—as a matter of law—the relevancy of the evidence offered was contingent on the defense Boyd presents at trial.

Next, we will briefly address defendant’s contention that the offered evidence should be excluded because its probative value is substantially outweighed by unfair prejudice. See MRE 403. This Court has applied MRE 403 to the admission of other acts evidence under MCL 768.27a in several cases. See, e.g., *Pattison*, 276 Mich App at 620-621 (cautioning trial courts “to take seriously their responsibility to weigh the probative value of the evidence against its undue prejudicial effect in each case before admitting the evidence [under MCL 768.27a].”); *People v Mann*, 288 Mich App 114, 118; 792 NW2d 53 (2010). In those cases, the Court first determined whether the other acts evidence was relevant, and it then determined whether evidence that was admissible under MCL 768.27a should nevertheless be excluded because its probative value was substantially outweighed by unfair prejudice. Here, the trial court did not undergo a MRE 403 analysis. The trial court decided the issue solely on an erroneous understanding of the relevancy requirements. We believe that an initial decision concerning the application of MRE 403 is best made by the trial court after a hearing on the merits.

Accordingly, we reverse the trial court's order preventing the prosecution from presenting the other acts evidence in its case-in-chief and remand for a hearing to determine whether the proposed evidence's probative value is substantially outweighed by the danger of unfair prejudice.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ William C. Whitbeck
/s/ Michael J. Kelly